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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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18 ONEBEACON INSURANCE COMPANY,
19 Plaintiff(s),
20 v.
21 HAAS INDUSTRIES, INC.,
22 Defendant(s).

Case No: C-07-3540 BZ (MEJ)

**MOTION TO STRIKE EVIDENCE
PROFFERED BY DEFENDANT IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

Date: April 2, 2008
Time: 10:00 a.m.
Courtroom: Courtroom G

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18 Plaintiff and moving party hereby moves to strike paragraph 4 and Exhibit B of the
19 Declaration of Carmen Holster in opposition to this motion. This motion is made on alternative
20 grounds: (1) the Exhibit is a document which has never previously been disclosed and no
21 justification for non-disclosure has been made Paradigm Sales v. Weber Marketing Systems, 880
22 F.Supp. 1247, 1250 (N.D. Ind. 1995) and (2) there is insufficient foundation laid for the
23 document in that it cannot be established that it was ever sent to Omneon. It is therefore
24 inadmissible. Orr v. Bank of America, NT&SA, 285 F.3d 764, 773 (9th Cir. 2002)

25 Ms. Holster states her belief that Exhibit B was sent to all customers in January 2005, but
26 that no copy was in her Omneon file and that she only came across it on March 11, 2008. She
27 states that she believes the letter was sent to Omneon "based on a review of our accounting file"
28 without attaching the file or bothering to explain how that file could be so illuminating.

1 Accordingly no sufficient foundation has been established for the document.

2 Moreover, in paragraph 3 of her declaration, she states that Omneon never asked for a
3 copy of Haas' tariff, which she identifies as Exhibit A. Haas' opposition on page 5 argues that
4 the absence of any tariff reference to the valuation charged assessed in lieu of the limitation is a
5 "red herring" because Omneon did not ask for it.

6 In light of her admission that she only found Exhibit B by serendipity, it does not
7 logically follow that Exhibit B would have been sent to Omneon anyway.

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9 Respectfully submitted

10 DATED: March 19, 2008

JAMES ATTRIDGE

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12 By: /s/ James Attridge

13 JAMES ATTRIDGE
14 Attorney for Plaintiff
15 ONEBEACON INSURANCE COMPANY

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